

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

JOUREY NEWELL, on behalf of himself	)	
and others similarly situation,	)	
	)	
PLAINTIFF,	)	
	)	
v.	)	Case No: 1:19-CV-01489-SCJ
	)	
ALIERA HEALTHCARE, INC. and	)	
INSURANCE CARE NOW, LLC,	)	
	)	
DEFENDANTS.	)	

**DEFENDANT ALIERA HEALTHCARE, INC.’S MOTION TO DISMISS**

Pursuant to Federal Rule of Civil Procedure 12(b)(6), defendant, Alieria Healthcare, Inc. (“Alieria”), moves to dismiss Plaintiff’s complaint for the following reasons:

1. Plaintiff’s claims for violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.* (“TCPA”) should be dismissed pursuant to Rule 12(b)(6) because the complaint does not allege facts showing that Alieria initiated or made any telephone calls to Plaintiff’s cellular telephone line using an artificial or prerecorded voice to deliver a message without the prior express consent of Plaintiff.
2. Plaintiff fails to assert facts supporting his claim that Alieria should be held vicariously liable for calls made by a non-party to this lawsuit.

3. As discussed in more detail in the accompanying memorandum, the conclusory allegations in the Complaint are inadequate to state a claim upon which relief should be granted, and the Complaint should therefore be dismissed.

4. The grounds and precedent for this motion are more fully set forth in Aliera's brief in support of its motion to dismiss, filed contemporaneously herewith and incorporated by reference into this motion.

WHEREFORE, Defendant Aliera Healthcare, Inc. respectfully requests that this Court dismiss all of Plaintiff's claims against it and that this Court grant such other relief to which Aliera is justly entitled.

Dated: May 7, 2019

STITES & HARBISON, PLLC

/s/ Eric J. Breithaupt

Eric J. Breithaupt  
Georgia Bar No. 596142  
303 Peachtree Street, N.E.  
2800 Suntrust Plaza  
Atlanta, Georgia 30308 .  
Phone (404) 739-8974  
Fax (404) 332-0274  
Email ebreithaupt@stites.com

**CERTIFICATE OF COMPLIANCE**

I, Eric J. Breithaupt, certify that the foregoing has been prepared in Times New Roman 14 font and is in compliance with United States District Court, Northern District of Georgia Local Rules 5.1(C) and 7.1(D).

This 7th day of May, 2019.

/s/Eric J. Breithaupt

Eric J. Breithaupt

Georgia Bar No. 596142

ebreithaupt@stites.com

**STITES & HARBISON, PLLC**

303 Peachtree Street, N.E.

2800 SunTrust Plaza

Atlanta, GA 30308

Telephone: (404) 739-8800

Facsimile: (404) 739-8870

*Attorneys for Defendant, Nissan Motor  
Acceptance Corporation*

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the Motion to Dismiss was filed of record with the Court on this 7th day of May, 2019, and a copy of said filing was served upon the following:

Steven H. Koval  
The Koval Firm, LLC  
3575 Piedmont Road  
Building 15, Suite 120  
Atlanta, GA 30305

*Counsel for the Plaintiff*

/s/ Eric J. Breithaupt

Eric J. Breithaupt